



IN CITY COUNCIL

OCTOBER 5, 2015

Marlborough, Mass., _____

ORDERED:

DECISION FOR SPECIAL PERMIT IN CITY COUNCIL

NOTICE OF DECISION GRANT OF SPECIAL PERMIT

Special Permit Application of:
Charter Foods North, LLC
1111 Gateway Service Park Rd.
Morristown, TN 37813
Order No. 15-1006282B

Locus:
773 Boston Post Rd. East
Assessors Map 61, Parcel 30

DECISION

The City Council of the City of Marlborough hereby GRANTS the application of Charter Foods North, LLC as provided in the DECISION and subject to Procedural Findings and Findings of Facts and Conditions.

Decision date: **October 13, 2015**

The Decision of the City Council was filed in the Office of the City Clerk of the City of Marlborough on the **13th** day of **October, 2015**.

This is to certify that twenty (20) days have passed since the filing of the within decision and no appeal has been filed with this office.

Given at Marlborough this **3rd** day of **November, 2015**.

Given under Chapter 40A Section 17 of the General Laws.

A TRUE COPY
ATTEST

City Clerk



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DECISION ON A SPECIAL PERMIT IN CITY COUNCIL

Special Permit
Charter Foods North, LLC
Order No. 15-1006282B

DECISION ON A SPECIAL PERMIT CITY COUNCIL ORDER NO. 15-1006282B

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to Charter Foods North, LLC (the "Applicant") for one (1) drive-through service window for a restaurant located at 773 Boston Post Road East, Marlborough, Massachusetts, as provided in this Decision and subject to the following Procedural Findings and Findings of Facts and Conditions.

FINDINGS OF FACT AND RULING

1. The Applicant is a duly organized and existing foreign Limited Liability Company having a business address of 1111 Gateway Service Park Road, Morristown, TN 37813.
2. The Applicant is the prospective lessee of a portion of the property located at 773 Boston Post Road East, Marlborough, Massachusetts, as shown on the Assessors' Map of the City of Marlborough as a portion of Map 61, Parcel 30 (the "Site"). The Site is owned by Route 20 Marlboro Properties LLC, c/o R.K. Associates, Inc., 456 Providence Highway, P.O. Box 111, Dedham, MA 02027.
3. The Applicant proposes to utilize an existing structure, which contains two abandoned drive-through windows, on the Site to operate a Taco Bell restaurant with one (1) drive-through service window (the "Project").
4. The Site is located in the B Business Zoning District as determined by the Zoning Map of the City of Marlborough.
5. The Applicant's use of the Site as a restaurant with a drive-through service window is allowed by special permit pursuant to Sections 650-14.B(2) and 650-17 of the Zoning Ordinance.



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6. In connection with the Application, the Applicant has submitted a certified list of abutters, filing fees, a plan of the existing site entitled "Taco Bell Remodel Existing Locus Plan 07.16.15" and a detailed site plan of the proposed site entitled "Taco Bell Remodel Proposed Site Plan 07.08.15," both plans prepared by Kathleen Day, Architect, 8535 Ferry Road, Waynesville, OH 45068 (the "Plans").
7. The Plans were certified by the Building Commissioner of the City of Marlborough, acting on behalf of the City Planner for the City of Marlborough, as having complied with Rule 4, items (a) through (m), of the Rules and Regulations promulgated by the City Council for the issuance of a Special Permit.
8. Pursuant to the Rules and Regulations of the City Council for the City of Marlborough and applicable statutes of the Commonwealth of Massachusetts, the City Council established a date for public hearing on the Application and the City Clerk for the City of Marlborough caused notice of the same to be advertised and determined that notice of the same was provided to abutters entitled thereto in accordance with applicable regulations and law.
9. The Marlborough City Council, pursuant to Massachusetts General Laws, Chapter 40A, held a public hearing on the application on Monday, August 24, 2015.
10. The Applicant, through its representatives, presented testimony at the public hearing detailing the Project, describing its impact upon municipal services, the neighborhood, and traffic. One resident who lives at 666 Brigham Street spoke in favor of the Project based on tax dollars and jobs for residents being generated out of what is presently a vacant building. Abutters to the far rear of the larger parcel containing the Site, who live at 17 Arcadia Circle and 47 Settlers Lane, spoke in opposition to the Project based on concerns of blight, noise, trash, and restaurant operating hours.

BASED ON THE ABOVE, THE CITY COUNCIL MAKES THE FOLLOWING FINDINGS AND TAKES THE FOLLOWING ACTIONS

- A. The Applicant has complied with all Rules and Regulations promulgated by the Marlborough City Council as they pertain to special permit applications.



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- B. The City Council finds that the proposed use of the Site is an appropriate use and in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough when subject to the appropriate terms and conditions as provided herein. The City Council makes these findings subject to the completion and adherence by the Applicant, its successors and/or assigns to the conditions more fully set forth herein.
- C. The City Council, pursuant to its authority under Massachusetts General Laws Chapter 40A and the Zoning Ordinance of the City of Marlborough hereby GRANTS the Applicant a Special Permit to operate one (1) drive-through service window as shown on the Plan filed, SUBJECT TO THE FOLLOWING CONDITIONS, which conditions shall be binding on the Applicant, its successors and/or assigns:
 1. Construction in Accordance with Applicable Laws. Construction of all structures on the Site shall be in accordance with all applicable Building Codes and Zoning Regulations in effect in the City of Marlborough and the Commonwealth of Massachusetts, and shall be built according to the Plans as may be amended during Site Plan Review.
 2. Compliance with Applicable Laws. The Applicant, its successors and/or assigns agrees to comply with all municipal, state, and federal rules, regulations, statutes, and ordinances as they may apply to the construction, maintenance, and operation of the Project.
 3. Site Plan Review. The issuance of the Special Permit is further subject to detailed Site Plan Review in accordance with the City of Marlborough site plan review ordinance prior to the issuance of the building permit. Any additional changes, alterations, modifications or amendments, as required during the process of Site Plan Review, shall be further conditions attached to the building permit, and no occupancy permit shall be issued until the Applicant has complied with all conditions. Subsequent Site Plan Review shall be consistent with the conditions of this Special Permit and the Plans submitted, reviewed and approved by the City Council as the Special Permit Granting Authority.



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4. Modification of Plans. Notwithstanding conditions #1 and #3 above, the Site Plan Review Committee may make engineering changes to the Plans, so long as said changes do not change the use of the Project as approved herein, or materially increase the impervious area of the Project, reduce the green area, alter traffic flow, increase the size, shape or position of the building, or alter the fencing bordering the property, all as shown on the Plans.
5. Signs and Awnings. The locations and design of signage shall be reviewed and approved by the City of Marlborough in accordance with the Sign Ordinance of the City of Marlborough without variance therefrom except as herein provided. No posters, graphics, lettering or any other form of advertising shall be affixed to windows or hanging inside or in front of windows.
6. Incorporation of Submissions. All plans, photo renderings, site evaluations, briefs and other documentation provided by the Applicant as part of the Application, and as amended or revised during the application/hearing process before the City Council and/or the City Council's Urban Affairs Committee, including exhibits thereto, are herein incorporated into and become a part of this Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council.
7. Hours of Operation. The hours of operation for the restaurant and the drive-through window shall not exceed Monday through Sunday, 7:00 a.m. to 2:00 a.m. There will be no 24-hour operation.
8. Traffic Signage. The location and placement of pavement markings and traffic directional signage currently located at the Site shall be reviewed and approved by the City of Marlborough during Site Plan Review in accordance with applicable rules and regulations of the City of Marlborough.
9. Parking Area Rules. Parking areas will be swept and maintained by the Applicant, its successors and/or assigns as necessary. The Applicant, its successors and/or assigns shall be responsible for providing, installing and maintaining all signage or markings currently located on the Site as required by the Marlborough Traffic Commission. Such signage or markings shall meet the standards of the Manual on Uniform Traffic Control Devices.



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10. No Overnight Parking. There shall be no overnight parking at the Site.
11. Drive-Through Speakers. The drive-through window shall employ a pedestal speaker system that automatically adjusts to the ambient noise so as to minimize the noise emanating from the speaker system to levels comporting with the noise ordinance of the City of Marlborough. The drive-through audio speakers shall not produce noise at the rear property line of the plaza, shown as Map 61, Parcel 30 on the Assessors' Map of the City of Marlborough, greater than that which would be allowed in a residential zone pursuant to the Noise Ordinance of the City of Marlborough.
12. Deliveries. In order to mitigate noise concerns for residential abutters, no deliveries to the Site by semi-trailers shall occur prior to 7:00 a.m. or after 7:00 p.m.
13. Lighting. Applicant, its successors and/or assigns shall utilize illuminations as currently located at the Site.
14. Landscaping. The Applicant, its successors and/or assigns agrees to plant and maintain in good condition the Project's landscaping substantially in conformance with the final site plan as submitted to the City Council, which plan is entitled "Taco Bell Remodel, Final Site Plan, 09.28.2015."
15. Trash. Applicant, its successors and/or assigns agrees to keep dumpsters covered and to screen the Project's trash area by constructing a dumpster enclosure of a design compatible with the building. Applicant, its successors and/or assigns further agrees that the dumpsters located on the Site shall be covered. No trash pickup shall occur before 7:00 AM or after 7:00 PM.
16. Snow Removal. Applicant, its successors and/or assigns shall maintain and conduct snow storage and removal on the Site, and shall store or remove snow as necessary to provide for clear and safe traffic flow on the Site.
17. Non-Severability of Conditions. If any of the above conditions is deemed to be invalid by a court of competent jurisdiction, then this Decision shall be null and void.



IN CITY COUNCIL

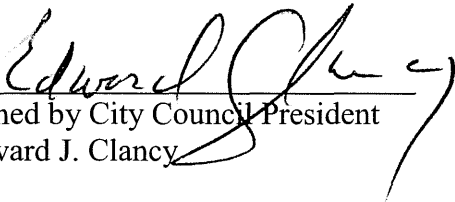
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18. Recording of Decision. In accordance with the provisions of M.G.L. c. 40A, § 11, Applicant, its successors and/or assigns, at its expense shall record this Special Permit in the Middlesex South Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Special Permit has elapsed with no appeal having been filed, and before a Building Permit is issued. Applicant, its affiliates, successors and/or assigns shall also furnish proof of recording to the City Solicitor's Office and the City Council immediately subsequent to recording.

Yea: 9 – Nay: 0

Yea: Delano, Elder, Tunnera, Irish, Clancy, Landers, Ossing, Oram & Robey


Signed by City Council President
Edward J. Clancy

ADOPTED
In City Council
15-1006282B